IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2007

Coram

The Honourable Mr. Justice K.N.BASHA

Crl.R.C.No.801 of 2007

Upasana Finance Ltd.,
Represented by R.Somasundaram,
No.98a, Dr.Radhakrishnan Salai,
Chennai - 600 004. .. Petitioner

vs.

State by : Inspector of Police,
District Crime Branch,
Dharmapuri. .. Respondent

Prayer : Revision filed under Section 397 r/w 401 of Criminal Procedure Code praying to call for the records in Crime No.19/2000 and set aside the order dated 19.12.2006 passed by the learned Judicial Magistrate No.II, Hosur, in referred charge sheet entered as serial No.93 of 2006.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R

The learned counsel for the petitioner submitted that the petitioner has come forward with this petition seeking for the relief of setting aside the order dated 19.12.2006 passed by the learned Judicial Magistrate No.II, Hosur, by recording the final report submitted by the respondent police to the effect of referring the case as mistake of fact.

2. It is contended by the learned counsel for the petitioner that though the respondent police served notice in respect of referring the case as mistake of fact, the learned Magistrate, before recording the same in the order, has not issued any notice affording opportunity to the petitioner to object the same. The learned counsel for the petitioner placed reliance on the decisions of the Hon'ble Apex Court in Bhagwant Singh Vs. Commissioner of Police reported in 1985 U.J. (S.C.) 820 and Union Public Service Commission v. S.Papaiah reported in (1997) 7 SCC 614 for the proposition that issuance of notice by the Magistrate to the

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informant at the time of consideration of the final report is a must and the issuance of notice by the concerned police to the informant is not sufficient.

3. Per contra, learned Additional Public Prosecutor contended that in this case already investigation was completed by the respondent police and the respondent police filed a final report referring the matter as mistake of fact. It is also contended by the learned Additional Public Prosecutor that already the notice was served to the informant, viz., the petitioner herein and the acknowledgment was also furnished to the concerned Magistrate Court. Therefore, it is contended by the learned Additional Public Prosecutor that it is open to the petitioner to file a protest petition.

4. I have carefully considered the rival contentions put forward by either side and also perused the impugned order passed by the learned Magistrate and other materials available on record.

5. A perusal of the impugned order passed by the learned Magistrate makes it crystal clear that the learned Magistrate simply proceeded to record the final report to the effect that the case was referred as mistake of fact and there is absolutely no reference about issuing any notice to the petitioner herein who is the informant in this case by affording opportunity for him to raise objections by filing a protest petition before the learned Magistrate. On the other hand, there is a vague reference made in the impugned order to the effect that notice was sent to the petitioner on 24.11.2006. But there is absolutely no mention about serving the notice on the informant. As rightly pointed out by the learned counsel for the petitioner the Hon'ble Apex Court has held in Union Public Service Commission v. Sp.Papaiah reported in (1997) 7 SCC 614 as follows :

> "The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must".
>
> The issuance of notice by the CBI to the appellant was not a substitute for the notice which was required to be given by the Magistrate. The Magistrate could not in any event "delegate" to the investigating agency its function of issuing notice. Moreover, when law requires a particular thing to be done in a particular manner, it must be done in that manner and in no other manner.
>
> Thus, the Magistrate was not justified in accepting the final report of the CBI and closing the case without any notice to the appellant and behind its back."

The above said principle laid down by the Hon'ble Apex Court, in the decision cited supra, is squarely applicable to the instant case as in

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this case also, it is not denied by the petitioner herein, viz., informant, that he has received a notice from the respondent police but has not received any notice from the learned Magistrate before recording the final report to the effect that referring the matter as mistake of fact in the impugned order dated 19.12.2006 and therefore, this Court is left with no other alternative except to set aside the impugned order passed by the learned Judicial Magistrate No.II, Hosur, and to direct the learned Magistrate to issue notice to the petitioner herein, viz., informant, in respect of the final report filed by the respondent police and to afford opportunity to the petitioner herein to raise his objections by filing a protest petition.

gg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.II, Hosur.

2. -do- Thro' The Chief Judicial Magistrate, Dharmapuri.

3. The Inspector of Police,
   District Crime Branch,
   Dharmapuri.

4. The Additional Public Prosecutor,
   Madras High Court, Madras.

+1 cc to Mr.Manoj Sreevalsan, Advocate Sr.No.33501.

SSV(CO)
DCP/19.6.07

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